

1 Jane L. Froyd (State Bar No. 220776)
JONES DAY
2 1755 Embarcadero Road
Palo Alto, California 94303
3 Telephone: (650) 739-3939
Facsimile: (650) 739-3900
4 jfroyd@jonesday.com

5 Attorney for Plaintiffs
BMW OF NORTH AMERICA, LLC and
6 BAYERISCHE MOTOREN WERKE AG

7
8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION
11

12 BMW OF NORTH AMERICA, LLC and
BAYERISCHE MOTOREN WERKE AG,

13 Plaintiffs,

14 v.

15 VALERY MIFTAKHOV, d/b/a ELECTRIC
16 MOTOR WERKS, and EMOTORWERKS,
LLC,

17 Defendants.
18
19
20
21
22
23
24
25
26
27
28

Case No. 3:13-cv-04058-WHA

~~STIPULATION AND [PROPOSED]~~
ORDER REGARDING DISCOVERY
OF ELECTRONICALLY STORED
INFORMATION FOR STANDARD
LITIGATION

1 **1. PURPOSE**

2 This Order will govern discovery of electronically stored information (“ESI”) in this case
3 as a supplement to the Federal Rules of Civil Procedure, this Court’s Guidelines for the
4 Discovery of Electronically Stored Information, and any other applicable orders and rules.

5 **2. COOPERATION**

6 The parties are aware of the importance the Court places on cooperation and commit to
7 cooperate in good faith throughout the matter consistent with this Court’s Guidelines for the
8 Discovery of ESI.

9 **3. LIAISON**

10 The parties have identified liaisons to each other who are and will be knowledgeable
11 about and responsible for discussing their respective ESI. Each e-discovery liaison will be, or
12 have access to those who are, knowledgeable about the technical aspects of e-discovery, including
13 the location, nature, accessibility, format, collection, search methodologies and production of ESI
14 in this matter. The parties will rely on the liaisons, as needed, to confer about ESI and to help
15 resolve disputes without court intervention.

16 **4. PRESERVATION AND PRODUCTION**

17 The parties have discussed their preservation obligations and needs and agree that
18 preservation of potentially relevant ESI will be reasonable and proportionate. To reduce the costs
19 and burdens of preservation and to ensure proper ESI is preserved, the parties agree that:

- 20 (a) Only ESI created or received between August 30, 2010 and August 30,
21 2013 will be preserved.
- 22 (b) All documents will be exchanged on discs, by e-mail, or other digital
23 storage medium (including but not limited to “zip” files and FTP transfer);
- 24 (c) The parties will produce ESI either as single-page, black and white Group
25 IV .tiff images or as searchable PDF files. The parties shall meet and
26 confer to decide what file format(s) in which to produce ESI. The ESI
27 shall be produced with production numbers, and appropriate image-based
28 or data “load” files, as necessary. If applicable, the parties shall meet and

1 confer on the appropriate “load” files to accompany their respective
2 document productions. At a minimum, the “load” files must provide the
3 location and unitization of the .tiff files. Native files of ESI may be
4 produced at the producing party’s discretion when reasonably necessary to
5 make the information contained therein accessible (this would include, for
6 example, spreadsheets or other data compilations) and upon reasonable
7 request of the requesting party. To the extent the ESI already existed in
8 text searchable format independent of this litigation, the ESI shall be
9 produced with searchable text.

10 (d) The parties will not be required to produce metadata accompanying
11 otherwise responsive ESI absent a showing of good cause; and the parties
12 are not required to preserve metadata fields accompanying otherwise
13 responsive ESI that are frequently updated in the ordinary course of
14 business such as last-opened dates.

15 (e) Absent a showing of good cause, no party need restore any form of media
16 upon which backup data is maintained in a party's normal or allowed
17 processes, including but not limited to backup tapes, disks, SAN, and other
18 forms of media, to comply with its discovery obligations in the present
19 case.

20 (f) Absent a showing of good cause, voice-mails, PDAs and mobile phones are
21 deemed not reasonably accessible and need not be collected and preserved.

22 (g) General ESI production requests under Federal Rules of Civil Procedure 34
23 and 45 shall not include e-mail, instant messages, or other forms of
24 electronic correspondence (collectively “e-mail”). To obtain e-mail,
25 parties must propound specific e-mail production requests, which must be
26 on specific issues, rather than general discovery of a product or business.

27 **5. SEARCH**

28 Absent a showing of good cause, e-mail production requests shall be limited to five (5)

1 custodians selected by the requesting party. The e-mail production requests shall identify the
 2 custodian by name and specific date range for the search of the proposed responsive ESI. Each
 3 requesting party shall limit its e-mail production requests to a total of five (5) search terms per
 4 custodian. The search terms shall be narrowly tailored to particular issues. Indiscriminate terms,
 5 such as the producing company's name or its product name, are inappropriate unless combined
 6 with narrowing search criteria that sufficiently reduce the risk of overproduction. A conjunctive
 7 combination of multiple words or phrases (e.g., "computer" and "system") narrows the search and
 8 shall count as a single search term. A disjunctive combination of multiple words or phrases (e.g.,
 9 "computer" or "system") broadens the search, and thus each word or phrase shall count as a
 10 separate search term unless they are variants of the same word. Use of narrowing search criteria
 11 (e.g., "and," "but not," "w/x") is encouraged to limit the production.

12 **6. DOCUMENTS PROTECTED FROM DISCOVERY**

13 (a) Pursuant to Rule 502(d) of the Federal Rules of Evidence, the inadvertent
 14 production of a privileged or work-product-protected ESI is not a waiver in
 15 the pending case or in any other federal or state proceeding. The
 16 production of later claimed privileged material within the ESI produced in
 17 this litigation shall be considered an inadvertent production under Rule 502
 18 and shall not itself constitute a waiver for any purpose.

19 (b) Communications involving trial counsel that post-date the filing of the
 20 complaint need not be placed on a privilege log. Communications may be
 21 identified on a privilege log by category, rather than individually, if
 22 appropriate.

23 **7. MODIFICATION**

24 This Stipulated Order may be modified by a Stipulated Order of the parties or by the
 25 Court for good cause shown. ~~The Court shall consider contested requests for up to five (5)~~
 26 ~~additional custodians per producing party, upon showing a distinct need based on the size,~~
 27 ~~complexity and issues of this specific case.~~ Should a party serve e-mail production requests for
 28 additional custodians beyond the limits agreed to by the parties or granted by the Court pursuant

to this paragraph, the requesting party shall bear all reasonable costs caused by such additional discovery.

IT IS SO STIPULATED, through Counsel of Record.

Dated: December 5, 2013

JONES DAY

By: /s/ Jane L. Froyd

Jane L. Froyd

Counsel for Plaintiffs
BMW OF NORTH AMERICA, LLC and
BAYERISCHE MOTOREN WERKE AG

In accordance with Civil Local Rule 5-1(i)(3), the above signatory attests that concurrence in the filing of this document has been obtained from the signatory below.

Dated: December 5, 2013

TRANSPACIFIC LAW GROUP

By: /s/ Pavel Pogodin

Pavel Pogodin

Counsel for Defendants
VALERY MIFTAKHOV, d/b/a
ELECTRIC MOTOR WORKS, and
EMOTORWORKS, LLC

IT IS ORDERED that the forgoing stipulation with modifications is approved.

DATED: December 6, 2013.

